

REMARKS

Applicant submits this Amendment in reply to the Office Action dated March 26, 2004.

In the Preliminary Amendment filed on November 19, 2003, Applicant cancelled claims 1-12, without prejudice or disclaimer, and added claims 13-34. By this Amendment, Applicant cancels claims 13-34, without prejudice or disclaimer, and adds new claims 35-59, of which claims 35, 54, and 57 are independent claims. The originally filed specification, drawings, and claims fully support the subject matter of new claims 35-59. No new matter has been introduced.

On pages 2-3 of the Office Action, claims 16-18, 20, and 24 were rejected under 35 U.S.C. §112, first and second paragraphs, and claim 21 was rejected under 35 U.S.C. §112, second paragraph. Applicant has cancelled claims 16-18, 20, 21, and 24, rendering the rejections moot. New claims 35-59 are in full compliance with 35 U.S.C. §112, first and second paragraphs.

On pages 3-6 of the Office Action, claims 13-15, 19, 20, 23, and 26-28 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,298,968 to Cheung ("Cheung"); claims were 16-18 rejected under 35 U.S.C. §103(a) as being unpatentable over Cheung in view of U.S. Patent No. 4,348,111 to Goulas et al. ("Goulas"); claim 21 was rejected under 35 U.S.C. §103(a) as being unpatentable over Cheung in view of U.S. Patent No. 3,786,261 to Tucker ("Tucker"); claims 22, 24, and 25 were rejected under 35 U.S.C. §103(a) as being unpatentable over Cheung in view of U.S. Patent No. 4,549,809 to Minekane et al. ("Minekane"); and claims 29-34 were rejected under 35 U.S.C. §103(a) as being unpatentable over Cheung in view of

U.S. Patent No. 3,804,535 to Rodriguez ("Rodriguez") and U.S. Patent No. 3,787,124 to Lowy et al. ("Lowy"). Applicant has cancelled claims 13-34, rendering the rejections moot. Insofar as the Examiner may apply these references to new claims 35-59, Applicant replies as set forth in the following remarks.

None of the cited references, either individually or in combination, disclose or suggest the claimed invention. For example, independent claim 35 recites a method of obtaining a relatively consistent scattered light measurement including, among other aspects, "adjusting an intensity of the light beam directed through the accommodation vessel based on the measured intensity of the transmitted component of the light beam." In another example, independent claim 54 recites a method of calibrating a system for measuring a specimen using light including, among other aspects, "adjusting an intensity of the light beam based on the measured intensity of the transmitted component of the light beam." In a further example, independent claim 57 recites a method of measuring a specimen using light including, among other aspects, "calibrating a measuring system by... adjusting an intensity of the measuring light based on the measured intensity of the transmitted component of the light beam." None of the cited references, either individually or in combination, disclose at least these respective aspects of the claimed invention either alone or in combination with the other aspects of the claimed invention.

On page 4 of the Office Action, the Examiner asserts that the "transmitted light is detected by a detector (36')" in Cheung and that "the intensity of the scattered light [is] measured, by a detector (36), separately from the transmitted light." Even assuming *arguendo* that the Examiner is correct, Cheung does not disclose the aforementioned

aspects of the claimed invention. Indeed, Cheung discloses that the first light detection means 36 sends impulses to the first light analyzing means 40, and that the second light detection means 36' sends impulses to the second light analyzing means 40'. "Once collected, the data from the first light analyzing means 40 are analyzed for the fluctuation characteristics of the sample and the data from the second light analyzing means 40' are analyzed for the total intensity characteristics of the sample. In this manner, simultaneous data acquisition is achieved." (Col. 8, lines 29-61). Cheung does not disclose any other relationship between respective detectors (36, 36') and analyzers (40, 40'), and certainly not "adjusting an intensity of the light beam based on the measured intensity of the transmitted component of the light beam."

Moreover, Applicant asserts that there would be no motivation to modify Cheung to adjust "an intensity of the light beam based on the measured intensity of the transmitted component of the light beam," as Cheung discloses a method and apparatus for collecting quasi-elastic scattering data and time average intensity data simultaneously. (Col. 1, lines 9-12, 30-37) In such an apparatus and method, the light used is typically a high-energy light source that has been stabilized. Accordingly, for at least these reasons, Applicant asserts that each of independent claims 35, 54, and 57, and their respective dependent claims, are patentable over Cheung.

Moreover, Applicant further asserts that neither Goulas, Tucker, Minekane, Rodriguez, nor Lowy remedy at least the aforementioned deficiency of Cheung. Indeed, any such deficiency would only have been identified with the benefit of hindsight, as a person of ordinary skill in the art would not have identified such a deficiency in Cheung, and thus would not have motivated to combine Cheung with any of the aforementioned

references. Moreover, with respect to the alleged combination of Cheung and Goulas, even if one of ordinary skill in the art had identified the alleged deficiency of Cheung, Goulas would not remedy this deficiency as Goulas does not disclose adjusting the light source in any way. Accordingly, Applicant respectfully requests the allowance of each of independent claims 35, 54, and 57 and their respective dependent claims.

Applicant further submits that claims 36-53, 55-56, and 58-59 depend from one of independent claims 35, 54, and 57, and are therefore allowable for at least the same reasons that each of those respective independent claims is allowable. In addition, at least some of the dependent claims recite unique combinations that are neither taught nor suggested by the cited references and therefore at least some also are separately patentable.

The Office Action contains characterizations of the claims and the related art with which Applicant does not necessarily agree. Unless expressly noted otherwise, Applicant declines to subscribe to any statement or characterization in the Office Action.

In discussing the specification, claims, abstract, and drawings in this Amendment, it is to be understood that Applicant is in no way intending to limit the scope of the claims to any exemplary embodiments described in the specification or abstract and/or shown in the drawings. Rather, Applicant is entitled to have the claims interpreted broadly, to the maximum extent permitted by statute, regulation, and applicable case law.

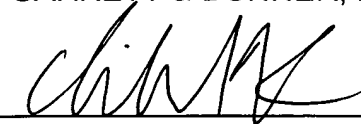
Please grant any extensions of time required to enter this Amendment and
charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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GARRETT & DUNNER, L.L.P.

Dated: September 24, 2004

By: _____



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